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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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7 UNITED STATES OF AMERICA,

Case No. 2:15-CR-77 JCM (VCF)

8 Plaintiff(s),

ORDER

9 v.

10 ERIC JAMAR GOODALL,

11 Defendant(s).

12  
13 Presently before the court is Magistrate Judge Ferenbach's report and recommendation  
14 ("R&R"), recommending that defendant Eric Goodall's motion to withdraw his guilty plea (ECF  
15 No. 108) be denied. (ECF No. 117). No objections have been filed, and the deadline for filing  
16 objections has since passed.

17 This court "may accept, reject, or modify, in whole or in part, the findings or  
18 recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). Where a party timely objects  
19 to a magistrate judge's report and recommendation, then the court is required to "make a de novo  
20 determination of those portions of the [report and recommendation] to which objection is made."  
21 28 U.S.C. § 636(b)(1).

22 Where a party fails to object, however, the court is not required to conduct "any review at  
23 all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149  
24 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a  
25 magistrate judge's report and recommendation where no objections have been filed. *See United*  
26 *States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review  
27 employed by the district court when reviewing a report and recommendation to which no  
28 objections were made).

1           Nevertheless, this court finds it appropriate to engage in a *de novo* review to determine  
2           whether to adopt the recommendation of the magistrate judge.

3           A defendant may withdraw his or her guilty plea only if the defendant “show[s] a fair and  
4           just reason for requesting the withdrawal.” Fed. R. Crim. P. 11(d)(2)(B). “The decision to allow  
5           a defendant to withdraw his plea, however, lies within the discretion of the district court.” *United*  
6           *States v. Ruiz*, 257 F.3d 1030, 1033 (9th Cir. 2001) (*en banc*) (citing *United States v. Turnipseed*,  
7           159 F.3d 383, 387 (9th Cir. 1998)).

8           Where the defendant has not challenged the adequacy of the Rule 11 colloquy, has not  
9           alleged newly discovered evidence, or pointed to intervening circumstances, courts have been  
10          reticent to grant motions to withdraw guilty pleas. *See United States v. Turner*, 898 F.2d 705, 713  
11          (9th Cir. 1990) (upholding district court’s denial of motion to withdraw guilty plea because  
12          defendant did “not challenge the adequacy of his Rule 11 hearing nor [did] he allege newly  
13          discovered evidence, intervening circumstances, or any other reason for withdrawing his guilty  
14          plea that did not exist when he pleaded guilty.”); *see also United States v. Rios–Ortiz*, 830 F.2d  
15          1067, 1069 (9th Cir. 1987) (same); *see also United States v. Nostratis*, 321 F.3d 1206, 1209–10  
16          (9th Cir. 2003) (affirming denial of motion to withdraw guilty plea in light of sufficient Rule 11  
17          inquiry conducted by district court); *United States v. Castello*, 724 F.2d 813, 815 (9th Cir. 1984)  
18          (crediting representations made during Rule 11 plea hearing over subsequent statements); *United*  
19          *States v. Signori*, 844 F.2d 635, 639 (9th Cir. 1988) (upholding district court’s finding that ample  
20          evidence showed defendant’s plea was voluntary based on Rule 11 colloquy).

21          Defendant argued that he should be allowed to withdraw his guilty plea because of “the  
22          combined effects of his mental diseases, and the medications that he takes for those conditions.”  
23          (ECF No. 108). Magistrate Judge Ferenbach found that defendant’s statements during the plea  
24          colloquy contradict his argument. (ECF No. 117). Specifically, during the change of plea  
25          colloquy, defendant “acknowledged that he took seizure medication, named the medications, and  
26          stated that he understood what he was doing by changing his plea.” (ECF Nos. 73, 117). Further,  
27          this court made a specific finding: “Based on counsel’s representations and the court’s own  
28          observation of the defendant, I find defendant is competent to plead in this matter.” (ECF No. 73).

1 Next, defendant argued that he should be allowed to withdraw his guilty plea based on  
2 ineffective assistance of his first attorney, Todd Leventhal. (ECF No. 108). “[A] defendant may  
3 successfully attack the validity of a guilty plea based on ineffective assistance of counsel if the  
4 defendant shows ‘that there is a reasonable probability that, but for counsel’s errors, he would not  
5 have pleaded guilty and would have insisted on going to trial.’” *United States v. Davis*, 428 F.3d  
6 802, 805 (9th Cir. 2005) (quoting *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)). Magistrate Judge  
7 Ferenbach rejected defendant’s argument, finding that his unsubstantiated allegations of bias fell  
8 short of meeting the standard for withdrawing a guilty plea based on ineffective assistance of  
9 counsel. (ECF No. 117).

10 Upon reviewing the recommendation and underlying briefs, the court finds that good cause  
11 appears to ADOPT the magistrate judge’s findings.

12 Accordingly,

13 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Magistrate Judge  
14 Ferenbach’s report and recommendation (ECF No. 117) be, and the same hereby is, ADOPTED  
15 in its entirety.

16 IT IS FURTHER ORDERED that defendant Goodall’s motion to withdraw his guilty plea  
17 (ECF No. 108) be, and the same hereby is, DENIED.

18 DATED October 18, 2016.

19   
20 UNITED STATES DISTRICT JUDGE